court to await judgment is not public money. *Branch* v. *United States* (U. S. 1876) 12 Ct. Cl. 281, 289; see *People ex rel. Nash* v. *Faulkner* (1887) 107 N. Y. 477, 14 N. E. 415; *Gartley* v. *People* (1901) 28 Colo. 227, 64 Pac. 208. It cannot be expended for public uses and it ought no more be protected than any other private property held under judicial process to await the outcome of the trial. In such a case the officer's liability is that of a bailee and not an insurer. *Browning* v. *Hanford* (N. Y. 1843) 5 Hill 588; see *Norris* v. *McCanna* (1886) 29 Fed. 757. There is, however, authority in support of the principal case depending upon a strict interpretation of the condition of the bond requiring the clerk to "pay over all moneys that may come into his hands by virtue of his office". *Morgan* v. *Long* (1870) 29 Iowa 434; *Northern Pac. Ry.* v. *Owens, supra.*

PUBLIC OFFICERS—COMMENCEMENT OF TERM.—The petitioner for a writ of mandamus alleged that he had been elected judge. Because of an error in the canvass his commission was not issued until three weeks later. In the meanwhile the governor of Illinois signed a bill increasing the salary of judges. There was no time mentioned in the statutes at which the term of office should begin. *Held,* the petitioner was not entitled to the increase, since it was granted within his term of office, and hence within the constitutional provision that salaries shall not be changed during an incumbent's continuance in office. *People ex. rel. Holdom* v. *Sweitzer* (Ill. 1917) 117 N. E. 625.

It is usual for statutes creating offices to designate the time when the term shall begin. In the absence of such provision, the general view is, that the term of office starts from the date of the election. *Macoy* v. *Curtis* (1880) 14 S. C. 367. Where there is no fraud, an error which does not vary the result, will not invalidate an election, *Town of Grove* v. *Haskell* (1909) 24 Okla. 707, 104 Pac. 56; *State ex. rel. Cole* v. *Chapman* (1878) 44 Conn. 595, 601, see Mechem, Public Officers, § 184, and since the candidate who receives the highest number of votes is the one elected, in spite of an erroneous certificate issued to his opponent, such certificate being only prima facie evidence of title to the office, *State ex. rel. Waymire* v. *Shay* (1884) 101 Ind. 36; *Wicks* v. *Jones* (1862) 20 Cal. 50, it seems to follow that the election is determined immediately at the close of the voting. The effect of a commission is merely to give notice to the person elected of such fact, and he can validly take office without ever receiving such notification. *Shuck* v. *State ex rel. Cope* (1893) 136 Ind. 63, 35 N. E. 993. Hence, because the law for the increase was passed after the date of election it would seem that the court reached the proper conclusion in denying the petitioner's claim for the increased salary.

SALES—ACCEPTANCE—PERISHABLE GOODS.—The plaintiff's assignor shipped dressed turkeys of a different description from those ordered by the defendant. The latter telegraphed the plaintiff of the noncompliance stating that he would not use the goods and, before he could receive a reply, sold the turkeys. In an action for the purchase price, it was *held* that the trial court was in error in withdrawing the determination of the fact of acceptance from the jury. *White* v. *Schweitzer* (1917) 221 N. Y. 461, 117 N. E. 941.

Although in a sale of unascertained goods, in the absence of special agreement, the title will pass upon a delivery to the carrier for the benefit of the vendee, Benjamin, Sales (5th ed.) 350, it will not so pass

when the goods delivered do not comply with the order. *Aultman, Miller & Co.* v. *Clifford* (1893) 55 Minn. 159, 56 N. W. 593. But the vendee is under the duty to return the goods or to notify the vendor of his refusal to accept, *Reed* v. *Randall* (1874) 29 N. Y. 358, and any act of ownership after the goods are delivered will be taken to indicate an acceptance binding the vendee to a payment of the purchase price, *Brown* v. *Foster* (1888) 108 N. Y. 387, 15 N. E. 608; *Thompson Machine etc. Co.* v. *Graves* (Conn. 1916) 98 Atl. 331; Sale of Goods Act (1893) § 35; Uniform Sales Act, § 48, but not where the act of ownership occurs before the receipt of the goods, see *Morton* v. *Tibbett* (1850) 19 L. J. C. L. 382, or if the acceptance is induced by fraud or misrepresentation. *Meyers* v. *Menifee & Co.* (1902) 30 Tex. Civ. App. 28, 68 S. W. 540. However, if the goods are to be delivered by installments, an acceptance of one installment does not preclude the right to reject the subsequent installments, *Schwartz* v. *Hirsch* (1907) 56 Misc. 618, 107 N. Y. Supp. 796, although a failure to comply with the conditions of one installment does not necessarily give the vendee the right to treat the contract as terminated. *Ellison Son & Co.* v. *Flat Top etc. Co.* (1911) 69 W. Va. 380, 71 S. E. 391. But when the goods are of a perishable nature, as in the instant case, there is an exception to the general rule and if the vendee communicates his rejection and, receiving no instructions, notifies the vendor of his intention to sell in order to prevent a total loss, the act of ownership in selling will not constitute an acceptance. *Descalzi Fruit Co.* v. *Sweet & Son* (1910) 30 R. I. 320, 75 Atl. 308; see *Richardson* v. *Levi* (N. Y. 1893) 69 Hun 432. Since a jury could have found in the instant case that the defendant had exercised ownership over the shipment without exerting every means to communicate, the holding is sound. The defendant may recover, however, for a breach of warranty of quality. Burdick, Sales (3rd ed.) 156 *et seq.*

STATUTE OF LIMITATIONS — CONCEALMENT OF CAUSE OF ACTION.— Premiums under a twelve-months' liability policy were based upon the estimated compensation to be paid by defendant insured to his employees during that period. Should the actual compensation exceed the estimated amount, an additional premium was to become due. Defendant, in violation of his contract, refused to allow plaintiff to inspect his books to ascertain actual compensation paid. In an action to recover additional premiums, defendant pleaded the Statute of Limitations. Plaintiff demurred, on the ground of fraudulent concealment of the cause of action. *Held,* the action was barred. *Fidelity & Casualty Co. of N. Y.* v. *Jasper Furniture Co.* (Ind. 1917) 117 N. E. 258.

The generally accepted rule is that fraudulent concealment of a cause of action tolls the Statute of Limitations, both at law and in equity, until after discovery. 2 Wood, Limitations (4th ed.) § 276f (1); see 10 Columbia Law Rev. 778. In Indiana this rule is statutory. Burns' Ann. Ind. Stat., Rev. 1914, § 302. To constitute fraudulent concealment there must be positive fraud. *Jackson* v. *Jackson* (1897) 149 Ind. 238, 47 N. E. 963; *Gunton* v. *Hughes* (1899) 79 Ill. App. 661. Mere silence is insufficient. *Despeaux* v. *Penna. R. R.* (C. C. 1898) 87 Fed. 794; *Glover* v. *National Bank of Commerce* (N. Y. 1913) 156 App. Div. 247, 141 N. Y. Supp. 409; but *cf. Allen* v. *Conklin* (1897) 112 Mich. 74, 70 N. W. 339. Moreover, it is essential that the plaintiff be misled as to the existence of a cause of action. *Sanborn* v. *Gale*